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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/549,433	10/17/2005	Wassyl Nowicky	P/4637-11	6431
2352 7590 05/05/2009 OSTROLENK FABER GERB & SOFFEN 1180 AVENUE OF THE AMERICAS NEW YORK, NY 100368403				
EXAMINER				
AULAKH, CHARANJIT				
ART UNIT		PAPER NUMBER		
1625				
MAIL DATE		DELIVERY MODE		
05/05/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/549,433

Applicant(s)

NOWICKY, WASSYL

Examiner

Charanjit S. Aulakh

Art Unit

1625

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 March 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 26, 28-32, 35-43, 45-49, 51, 52, 54, 55, 57, 59, 61 and 62 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 26, 28-32, 35-43, 45-49, 51, 52, 54, 55, 57, 59, 61 and 62 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-918)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 4/20/09
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. According to paper filed on March 3, 2009, the applicants have canceled claims 27, 33, 34, 44, 50, 53, 56, 58 and 60 and furthermore, have amended claims 26, 29, 40, 42, 43, 45, 46, 48, 49, 51, 52, 54, 55, 57 and 61.
2. Claims 26, 28-32, 35-43, 45-49, 51, 52, 54, 55, 57, 59, 61 and 62 are now pending in the application.

Response to Arguments

3. Applicant's arguments filed on March 3, 2009 have been fully considered but they are not persuasive regarding enablement rejection, prior art rejection and objection for containing non-elected subject matter. In regard to enablement rejection for the term --- derivatives ---, the applicants did not address this issue at all in their response. In regard to enablement rejection for methods of treatment, the examiner does not agree with the applicants arguments that efficacy of U-KRS in various medical applications is disclosed in examples 4-23. As stated clearly in the last office action, results are not present in any one of these examples and therefore, will require undue experimentation to demonstrate the efficacy of instant compounds of formula (I) in known vitro cell lines or animal models of every known viral infection, cancer, immunological diseases etc. and hence their utility for treating these disease conditions. In regard to prior art rejection, the examiner does not agree with the applicants arguments that the cited reference does not anticipate the instant claims when variable R1 represents a methyl group in the instant compounds of formula (I). In regard to objection for containing non-elected subject matter, the election of group I directed to compounds of formula (I) was

without traverse and therefore, the claims must be amended to compounds of formula (I), a process for preparing such compounds and methods of treatment using these compounds.

Conclusion

4. Rejection of claims 26, 28-32, 35-43, 45-49, 51, 52, 54, 55, 57, 59, 61 and 62 under 35 U.S.C. 112, first paragraph is maintained for the reasons of record.
5. Rejection of claims 52, 54, 55, 57, 59, 61 and 62 under 35 U.S.C. 102(b) is maintained for the reasons of record.
6. Objection of claims 26, 28-32, 35-43, 45-49, 51, 57 and 59 for containing non-elected subject matter is maintained for the reasons of record.
7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charanjit S. Aulakh whose telephone number is

(571)272-0678. The examiner can normally be reached on Monday through Friday, 8:30 A.M. to 5:00 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Janet Andres can be reached on (571)272-0867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Charanjit S. Aulakh/
Primary Examiner, Art Unit 1625